

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AURORA LOAN SERVICES,)	Case No.: 10-CV-04401-LHK
)	
Plaintiff,)	ORDER REMANDING UNLAWFUL
v.)	DETAINER ACTION TO MONTEREY
)	COUNTY SUPERIOR COURT
JESUS ANGEL, ET AL.,)	
)	
Defendants.)	

Jesus Angel and Barbara Fimbres-Angel (the “Angels”) have filed a notice of removal of their Monterey County Superior Court unlawful detainer action (in which they are Defendants) based on “federal claims raised in [Angels’] affirmative defenses to the unlawful detainer complaint.”

In the case of a removed action, if it appears at any time before final judgment that the court lacks subject matter jurisdiction, the court must remand the action to state court. 28 U.S.C. § 1447(c). The removing defendant bears the burden of establishing that removal is proper. *See Provincial Gov’t of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1087 (9th Cir. 2009). A plaintiff bringing an unlawful detainer claim is entitled to judgment upon establishing that the property at issue was sold in accordance with California Civil Code section 2924 and that the requisite three-day notice to quit to defendant was served as required in California Code of Civil Procedure section 1161. *See Litton Loan Servicing, L.P. v. Villegas*, 2011 U.S. Dist. LEXIS 8018,

2011 WL 204322, at * 2 (N.D. Cal. Jan. 21, 2011) (citing *Evans v. Superior Court*, 67 Cal. App. 3d 162, 168, 136 Cal. Rptr. 596 (1977)).

An unlawful detainer cause of action such as the one asserted here does not raise a federal question. *See, e.g., Litton*, 2011 U.S. Dist. LEXIS 8018, *2 (remanding unlawful detainer action to state court based on lack of federal question jurisdiction); *Partners v. Gonzalez*, 2010 U.S. Dist. LEXIS 95714, at * 2-3 (N.D. Cal. Aug. 30, 2010) (same). Moreover, it is well-settled that a case may not be removed to federal court on the basis of a federal defense. *See Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 10 (1983). Thus, to the extent the Angels' defenses or counterclaims to the unlawful detainer action are based on alleged violations of federal law, those allegations do not provide a basis for federal jurisdiction.

Accordingly, the unlawful detainer action is REMANDED to Monterey County Superior Court.

IT IS SO ORDERED.

Dated: April 28, 2011



LUCY H. KOH
United States District Judge